IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6668 OF 2003
WITH
CIVIL APPLICATION NO.999 OF 2004

Smt. Sulbha Pundalik Surve. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. N. V. Bandiwadekar for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent No.1.
Mr. C.G. Gavnekar for Respondent No.2.
Mr. M.V. Limaye for Respondent Nos.3 and 4.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 3, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. By these proceedings under Article 226 of the Constitution, the Petitioner seeks a direction to the Second Respondent (Education Officer (Primary), Raigad Zilla Parishad, at Alibag) to grant approval to the appointment of the Petitioner as an Assistant Teacher in the Marathi Prathamik Vidyalaya, Kalamboli

and for the release of her salary. The Petitioner has passed the SSC examination and holds the D.Ed. qualification. The Third Respondent conducts two Marathi Medium Primary Schools and a Hindi Medium Primary School. The Fourth Respondent, one of those schools, is a Government recognised and aided private primary school. The Petitioner was appointed in the Marathi Medium Primary School at Kalamboli on 1st August 1992 and it has been stated that her appointment was approved by the Second Respondent. It has been stated that on 30th December 1997, the Petitioner was appointed on probation for a period of two years with effect from 1st January 1998. One Smt. Dabholkar who was working as an Assistant Teacher submitted her resignation from the school which was accepted by the management and the Petitioner came to be appointed on probation as noted above. A proposal was submitted on 7th February 1998 and 16th March 1999 to the Second Respondent and it has been stated that the Second Respondent granted approval for the Petitioner for the period 1st January 1998 to 31st March 1999 and thereafter till 13th June 1999. It has been stated that the Second Respondent approved the services of the Petitioner for the Academic Years 1999-2000, 2000-01 and 2001-02 and the salary grant was released for the

aforesaid period for payment to the Petitioner as per scale. The management decided to make the Petitioner permanent in service together with certain other teachers and a proposal was submitted to the Second Respondent by a letter dated 22nd June 2001. On 16th April 2002, the Headmistress informed the Petitioner that under the directions of the Education Officer, four divisions of the School have been reduced for the Academic Year 2001-02. The management by its order dated 15th April 2002 absorbed the Petitioner in the Hindi Medium School at Kalamboli and the Petitioner was relieved from the Marathi Medium School from 15th April 2002. The Petitioner has stated that she worked at the Hindi Medium School from 15th April 2002 to 1st February 2003 after which she was again transferred to the Marathi Medium School.

3. The grievance of the Petitioner is that though she is working with the Fourth Respondent, she has not been paid her salary from Academic Year 2002-03 until date. The Petitioner has stated that she was orally informed by the Fourth Respondent on 4th August 2003 that approval has not been received from the Second Respondent as a result of which, her salary could not be paid in the absence of the release of the grant. The Petitioner

submitted a representation on 22nd August 2003 to the Second Respondent. The Petitioner has, therefore, submitted that she has worked continuously with the Fourth Respondent since 1st January 1992; that she was appointed on probation on 1st January 1998 for a period of two years and that she has attained the status of a permanent employee. According to the Petitioner, her appointment from 1st January 1998 was approved by the Second Respondent and her salary was paid till the end of Academic Year 2002. However, the approval has not been granted for Academic Year 2002-03 and thereafter.

4. In these proceedings an interim order was passed by a Division Bench of this Court on 19th January 2004 in which it was recorded that the Petitioner has not been paid her salary from June 2002. The Third and Fourth Respondents were directed to prepare a salary bill and to forward the same to the Second Respondent. The bill was directed to be forwarded by 10th February 2004 and the Second Respondent was directed to clear the payment due by the end of March 2004. In the meantime, the services of the Petitioner were protected and there was a direction that she shall be paid her salary from month to month.

5. A Civil Application has been taken out (CA 999 of 2004) by the Education Officer (Primary), Raigad Zilla Parishad, Alibag. In the Civil Application it has been averred that a copy of the Petition was received on 28th October 2003 and it was assigned to an Advocate who had filed his Vakalatnama on 9th February 2004. The Learned Advocate was, however, not present before the Court when the petition was listed for admission and interim orders, it has been stated, were passed in the absence of the Education Officer. It has been averred that several incorrect statements have been made in the petition. The Petitioner was appointed as an Assistant Teacher initially on 1st August 1992 for a part of the Academic Year 1992-93 after which she was not in employment until 9th July 1995. During the leave period of a regular teacher, the Third Respondent appointed the Petitioner for a temporary period of 90 days from 10th July 1995 till 7th October 1995 which was approved by a letter dated 1st December 1995 of the then Education Officer. The Petitioner was thereupon appointed on a temporary basis between 27th November 1995 and 24th February 1996 which was approved on 6th February 1997. The Petitioner thereafter worked for a period of three months and her services were discontinued. Thereafter, a

fresh appointment was given on 1st January 1998 by an order dated 30th December 1997. The proposal was forwarded for approval. However, it has been stated that since there was a backlog in respect of posts reserved for Scheduled Castes and Scheduled Tribes, the Second Respondent stated in a letter dated 1st July 1999 that appointments against reserved posts will not be approved. The approval was granted to the Petitioner under a letter dated 1st July 1999 for the period 1st January 1998 till 31st March 1999. Under a letter dated 2nd June 2000, approval was granted for Academic Year 1999-2000. It has been stated that under the roster, the post occupied by the Petitioner is reserved for SC/ST candidates and since no candidate belonging to a reserved category was available, approval was granted to the post of the Petitioner for specific periods during the course of Academic Years 1998-99 and 1999-2000. Again approval was granted only during the Academic Year 2001-2002 in view of the backlog that remained to be filled by reserved candidates. When the annual exercise of verification of rolls was carried out by the Second Respondent on 30th September 2001, it was found that the attendance of students in the three schools had reduced drastically and only 74 posts of Assistant Teachers could be sanctioned for

Academic Year 2001-02 as against the earlier sanctioned posts of 81 teachers. Seven teachers were accordingly rendered surplus of which the Petitioner, being the juniormost, in the Seniority List is one of the teachers. The school was advised to accommodate the petitioner in some other institution of the management by a letter dated 23rd March 2002. Accordingly, the Petitioner was declared as surplus by the Fourth Respondent and relieved from the school from 14th April 2002 for absorption in the Hindi Medium School. In these circumstances, it has been stated that the Petitioner is the juniormost teacher and that she has been rendered surplus for want of workload. Hence, no approval was granted for Academic Years 2002-03 and 2003-04. Hence, it has been submitted that the Petitioner has no right to claim the release of a grant for the payment of her salary from the Education Officer and that the liability of the Department would have arisen only upon the grant of approval to her appointment.

6. At the hearing of the petition, Counsel appearing on behalf of the Petitioner has submitted that in view of the averments contained in the Civil Application filed by the Education Officer, appropriate directions should be given by this Court on the basis of

which the date with effect from which the Petitioner has been rendered surplus can be determined. The Petitioner also submitted that in that event, action should be taken under Rule 26 of the MEPS Rules, 1981 for redeployment of the Petitioner in some other institution upon her being rendered surplus. We are of the view that the ends of justice would be met if the management is directed to produce all the papers before the Education Officer in order to enable the Education Officer to determine the point of time at which the Petitioner was rendered surplus. The liability until the Petitioner has been rendered surplus would have to be met by the Department, for the period during which the Petitioner worked, the school being admittedly an aided school. The liability after the date on which the Petitioner has been rendered surplus would have to be directed to be met by the management. Having regard to the facts of the case, we are of the view, that the claim of the Petitioner to be dealt with under Rule 26 as a surplus teacher should be directed to be considered in accordance with law.

7. We accordingly proceed to dispose of this petition with the following directions :

-(i) The Third Respondent-Management shall, within a period of two weeks from today, forward to the Second Respondent, the relevant documentary record in order to enable the Second Respondent to arrive at a correct determination of the date with effect from which the Petitioner has been rendered surplus;

-(ii) The Second Respondent shall, after hearing the management, the Petitioner and the concerned parties, determine within a period of eight weeks from the receipt of complete information, the date with effect from which the Petitioner has been rendered surplus and the tenability of the claim of the Petitioner, in that event, to the benefit of Rule 26 of the MEPS Rules, 1981;

-(iii) The Second Respondent shall be liable to release the salary grant payable in respect of the salary of the Petitioner for the period during which the Petitioner was employed until the date with effect from which the Petitioner is declared to be surplus and such amount as is found to be due and payable to the Petitioner shall be paid over within a period of eight weeks from the

determination of the Second Respondent;

-(iv) The Third Respondent shall be liable to pay the salary of the Petitioner for the period subsequent to the date with effect from which the Petitioner has been rendered surplus and the Third Respondent shall accordingly pay the outstanding arrears after giving due credit for the payments already made within a period of eight weeks of the determination of the Second Respondent. In the event that there is any dispute in regard to the computation of the dues, it shall be determined by the Second Respondent;

-(v) The Second Respondent shall, in the event that he comes to the conclusion that the Petitioner is entitled to the benefit of Rule 26 of the MEPS Rules, 1981, take steps to redeploy the Petitioner in pursuance of the aforesaid provision within a period of eight weeks of such determination.

-(vi) The Second Respondent shall file a report of compliance before the Registrar (Judicial) on or before 21st July 2006. The Registrar (Judicial) shall accordingly place the report before the appropriate Bench in accordance with assignment of work by the

Hon'ble the Chief Justice for the purposes of verifying compliance.

8. The petition is disposed of. There shall be no order as to costs.

9. In view of the disposal of the Writ Petition, the Civil Application does not survive and is accordingly disposed of.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.